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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DONNA BURTON,

Plaintiff,

v.

CITIGROUP INC.,

Defendant.

Case No.:

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

1. DONNA BURTON ("Plaintiff") brings this Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of CITIGROUP INC. ("Defendant"), in negligently and/or willfully contacting Plaintiff on Plaintiff's cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., ("TCPA"), thereby invading Plaintiff's privacy. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

2. Additionally, this is an action for damages brought by Plaintiff for Defendant's violations of the Rosenthal Fair Debt Collection Practices Act, Cal

1 Civ Code §1788, *et seq.* (hereinafter “RFDCPA”), which prohibits debt collectors
2 from engaging in abusive, deceptive, and unfair practices.

3 3. The TCPA was designed to prevent calls and text messages like the
4 ones described herein, and to protect the privacy of citizens like Plaintiff.
5 “Voluminous consumer complaints about abuses of telephone technology – for
6 example, computerized calls dispatched to private homes – prompted Congress to
7 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

8 4. In enacting the TCPA, Congress intended to give consumers a choice
9 as to how corporate similar entities may contact them, and made specific findings
10 that “[t]echnologies that might allow consumers to avoid receiving such calls are
11 not universally available, are costly, are unlikely to be enforced, or place an
12 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. In
13 support of this, Congress found that:

14
15 [b]anning such automated or prerecorded telephone
16 calls to the home, except when the receiving party
17 consents to receiving the call or when such calls are
18 necessary in an emergency situation affecting the health
19 and safety of the consumer, is the only effective means
20 of protecting telephone consumers from this nuisance
21 and privacy invasion.

22 Id. at § 12.

23 5. Congress also specifically found that “the evidence presented to the
24 Congress indicates that automated or prerecorded calls are a nuisance and an
25 invasion of privacy, regardless of the type of call...” Id. at §§ 12-13. See also,
26 *Mims*, 132 S. Ct. at 744.

27 JURISDICTION AND VENUE

28 6. This Court has federal question jurisdiction over Plaintiff’s TCPA
claims because this cause of action arises out of violations of federal law. 47
U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

PARTIES

10. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a national association and financial institution whose State of Incorporation is South Dakota. Defendant, is and at all times mentioned herein was a “person,” as defined by 47 U.S.C. § 153 (10). Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California and in the County of Mendocino, and within this judicial district.

12. At all relevant times herein, Defendant was a company engaged, by use of the mails and telephone, in the business of collecting a debt from Plaintiff which qualifies as a “consumer debt,” as defined by Cal Civ Code §1788.2(f). Defendant, by servicing consumer home loans, regularly attempts to collect debts alleged to be due to itself and/or another, and therefore is a “debt collector” as defined by the RFDCPA, Cal Civ Code §1788.2(c). *See In re Bank of Am. Home Affordable Modification Program (HAMP) Contract Litig.*, No. 10-MD-02193-

1 RWZ, 2011 WL 2637222, at *6 (D.Mass. July 6, 2011); *cf. Reyes v. Wells Fargo*
2 *Bank, N.A.*, No. C-10-01667JCS, 2011 WL 30759, at *20 (N.D.Cal. Jan. 3, 2011).

3 **FACTUAL ALLEGATIONS**

4 13. At all times relevant, Plaintiff was a citizen of the State of California.
5 Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47
6 U.S.C. § 153 (10).

7 14. Defendant is, and at all times mentioned herein was, a corporation
8 and a “person,” as defined by 47 U.S.C. § 153 (10).

9 15. At all times relevant Defendant conducted business in the State of
10 California and in the County of Mendocino, within this judicial district.

11 16. Beginning sometime on or around April of 2014, Defendant began to
12 utilize Plaintiff’s cellular telephone number, ending in 2164, in an attempt to
13 collect on two accounts to which Plaintiff does not owe an outstanding balance.
14 Plaintiff is current on both accounts that Defendant is contacting her about.

15 17. Defendant routinely has attempted to collect a debt from Plaintiff
16 after being only a couple days late on her monthly payments; in fact, they are
17 calling to collect an outstanding debt even within the allotted “grace period.”

18 18. On several occasions, Plaintiff has informed Defendant that she does
19 not want to be called for payment unless the allotted “grace period” has expired.

20 19. Her request notwithstanding, Defendant has still attempted to contact
21 Plaintiff concerning the debt within the “grace period.”

22 20. Plaintiff obtained legal representation regarding the instant matter,
23 thereby revoking any and all consent to receive telephone calls from Defendant
24 via an “automated telephone dialing system,” (“ATDS”). On or around May 8,
25 2014, Plaintiff sent a notice of representation to Defendant. Defendant was
26 thereby notified to stop calling Plaintiff. Defendant has failed to respond at this
27 time.
28

1 21. Furthermore, the notice of representation being sent notwithstanding,
2 Defendant still attempts to contact Plaintiff.

3 22. The telephone calls Defendant placed to Plaintiff's cellular telephone
4 were placed via an ATDS as defined by 47 U.S.C. § 227 (a)(1) as prohibited by
5 47 U.S.C. § 227 (b)(1)(A).

6 23. This ATDS has the capacity to store or produce telephone numbers
7 to be dialed, using a random or sequential number generator.

8 24. The telephone number that Defendant, or its agents, called was
9 assigned to a cellular telephone service for which Plaintiff incurs a charge for
10 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

11 25. These telephone calls constituted calls that were not for emergency
12 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

13 26. On or around the date that the notice of representation was sent to
14 Defendant by Plaintiff, May 8, 2014, Plaintiff effectively revoked any permission
15 or invitation Defendant had, if it even existed to begin with, to send Plaintiff
16 automated telephone calls to his cellular telephone. Thus, as of May 8, 2014,
17 Plaintiff did not provide Defendant or its agents with prior express consent to
18 receive telephone calls, pursuant to 47 U.S.C. § 227 (b)(1)(A).

19 27. Additionally, prior to May 8, 2014, Plaintiff orally revoked any and
20 all consent to be called by Defendant using at ATDS.

21 28. These telephone calls by Defendant, or its agents, violated 47 U.S.C.
22 § 227(b)(1).

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**FIRST CAUSE OF ACTION
NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT
47 U.S.C. § 227 ET SEQ.**

29. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

30. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

31. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq, Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

32. Plaintiff is also entitled to and seeks injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.**

33. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

34. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

35. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff is entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

36. Plaintiff is also entitled to and seeks injunctive relief prohibiting such conduct in the future.

**THIRD CAUSE OF ACTION
VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT
CAL. CIV. CODE § 1788 ET SEQ.**

37. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

38. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully.

39. Defendant's conduct violated the RFDCPA in multiple ways, including, but not limited to:

a) Causing a telephone to ring repeatedly or continuously to annoy Plaintiff (Cal. Civ. Code § 1788.11(d));

b) Communicating, by telephone or in person, with Plaintiff with such frequency as to be unreasonable and to constitute an harassment to Plaintiff under the circumstances (Cal. Civ. Code § 1788.11(e));

c) Communicating with Plaintiff at times or places which were known or should have been known to be inconvenient for Plaintiff (§ 1692c(a)(1));

d) Causing Plaintiff's telephone to ring repeatedly or continuously with intent to harass, annoy or abuse Plaintiff (§ 1692d(5));

e) Engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff (§ 1692d)); and

f) Where Defendant had not yet made an attempt to contact Plaintiff's counsel or had not given Plaintiff's counsel sufficient time to respond to the initial attempt to communicate with Plaintiff's counsel, and where Plaintiff's counsel had not given Defendant permission to contact Plaintiff directly, communicating with Plaintiff directly after learning that Plaintiff is being represented by counsel (§ 1692c(a)(2)).

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff the following relief against Defendant:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE
TCPA, 47 U.S.C. § 227 ET SEQ.**

40. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

41. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

42. Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL
VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

43. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

44. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

45. Any other relief the Court may deem just and proper.

**THIRD CAUSE OF ACTION
VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT
CAL. CIV. CODE § 1788 ET SEQ.**

46. Wherefore, Plaintiff respectfully prays that judgment be entered against Defendant for the following:

A. Actual damages;

B. Statutory damages for willful and negligent violations;

1 C. Costs and reasonable attorneys' fees; and

2 D. For such other and further relief as may be just and proper.

3 **TRIAL BY JURY**

4 47. Pursuant to the seventh amendment to the Constitution of the United
5 States of America, Plaintiff is entitled to, and demands, a trial by jury.
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8 Respectfully submitted this 7th day of August, 2014.
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11 **LAW OFFICES OF TODD M. FRIEDMAN, P.C.**
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13
14 By: /s/ Todd M. Friedman
15 Todd M. Friedman
16 Law Offices of Todd M. Friedman
17 Attorney for Plaintiff
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